



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

**[Docket Number USCG-2019-0300]**

**RIN 1625-AA08**

**Special Local Regulations; Festival of Sail Duluth 2019, Lake Superior, Duluth, MN**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary special local regulation for a designated area of the Duluth Harbor entrance to Superior Bay on Lake Superior during the Festival of Sail 2019 event in Duluth, MN. This action is necessary to provide for the safety of life on these navigable waters around the port of Duluth, MN. This rulemaking prohibits persons and vessels from being in the designated region unless authorized by the Captain of the Port Duluth or a designated representative.

**DATES:** This rule is effective from 7 a.m. on August 11, 2019, through 5 p.m. on August 13, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0300 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rulemaking, call or email Lieutenant Abbie Lyons, Waterways Management, MSU Duluth, U.S. Coast Guard; telephone 218-725-3818, e-mail [Abbie.E.Lyons@uscg.mil](mailto:Abbie.E.Lyons@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

On December 11, 2018 Draw Events LLC notified the Coast Guard that it will be conducting a Festival of Sail event in Duluth, MN from August 11 through August 13, 2019. The Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the Federal Register on May 8, 2019. A public comment period was held from May 8, 2019 to July 7, 2019 with no comments received. A Supplemental Notice of Proposed Rulemaking (SNPRM) was submitted to the **Federal Register** with a comment period held from July 3, 2019 to July 17, 2019, extending the Special Local Regulation through the duration of the event. During the comment period we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because action is needed during the Festival of Sail to respond to the potential safety hazards associated with increased vessel traffic within Superior Harbor.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Duluth (COTP) has determined that potential hazards associated with increased traffic during the Festival of Sail starting at 7 a.m. on August 11, 2019 will be a

safety concern for anyone the designated area. The likely combination of recreational vessels, paddling craft, and Tall Ships present an unacceptable risk of collisions which could result in serious injuries or fatalities. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the special local regulation during the event.

#### **IV. Discussion of Comments, Changes, and the Rule**

No comments were received on the SNPRM published July 3, 2019. There are no changes in the regulatory text of this rule from the proposed rule in the SNPRM.

This rule establishes a Special Local Regulation from 7 a.m. on August 11, 2019 through 5 p.m. on August 13, 2019. The duration of the zone is intended to protect the safety of vessels and these navigable waters before, during, and immediately after the scheduled Festival of Sail. Only the designated Tall Ships associated with the event are permitted within the zone while it is being enforced. No other vessels or persons will be permitted to enter the zone without obtaining permission from the COTP or a designated representative during the enforcement period. The COTP or a designated representative may be contacted via VHF Channel 16 or by telephone at (218) 428-9357. The regulatory text appears at the end of this document.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

##### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits

of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the availability of the Superior Harbor entrance as an alternate entry into Superior Bay, the short time frame of the special local regulation, and the estimated number of spectator vessels around the Duluth Harbor entrance for the event. We anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine Channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the restricted area may be small entities, for the reasons stated in section V.A above, this rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of federal employees who enforce, or otherwise determine compliance with, federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a state, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Directive

023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting 3 days that would prohibit entry within a designated area around the Duluth Harbor entrance. Normally such actions are categorically excluded from further review under paragraph L[61] in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures..

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

#### **PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS.**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T09-0300 to read as follows:

**§ 100.T09-0300 Special Local Regulations; Festival of Sail Duluth 2019, Lake**

**Superior, Duluth, MN.**

(a) *Regulated area*. This area includes all waters of Lake Superior and Duluth Harbor bounded by Rice's Point to the west and Duluth to the north, within the following boundaries: Beginning at position 46°46'48.36" N, 092°05'16.44" W, across Duluth Harbor to 46°47'02.76" N, 092°05'17.88" W, turning north toward the Duluth Lift Bridge to 46°47'19.32" N, 092°04'04.80" W, to 46°46'50.88" N, 092°05'17.88" W, out the Duluth Harbor Entrance at 46°46'45.12" N, 092°05'35.16" W, then northwest to 46°46'45.12" N, 092°05'39.84" W back to the north Duluth Entrance Light at 46°47'01.32" N, 092°05'51.00" W, through the canal at 46°47'00.60" N, 092°05'52.08" W, then along Minnesota Point at 46°46'51.60" N, 092°05'46.32" W, entering Minnesota Slip at 46°46'39.00" N, 092°06'03.96" W, encompassing the slip from 46°46'32.16" N, 092°05'38.76" W to 46°46'41.52" N, 092°05'36.24" W and back out the slip at 46°46'42.60" N, 092°05'34.44" W and back to the starting position of 46°46'48.36" N, 092°05'16.44" W.

(b) *Special local regulations*. (1) In accordance with the general regulations in § 100.35 of this part, entry into, transiting, or anchoring within the regulated areas is prohibited unless authorized by the Captain of the Port (COTP) Duluth or on-scene representatives.

(2) Vessels and persons receiving COTP Duluth or on-scene representative authorization to enter the area of this special local regulation must do so in accordance with the following restrictions:

(i) Vessels and persons must transit at a speed not exceed six (6) knots or at no wake speed, whichever is less. Vessels proceeding under sail will not be allowed in this Area



unless also propelled by machinery, due to limited maneuvering ability around numerous other spectator craft viewing the Festival of Sail.

(ii) Vessels and persons will not be permitted to impede the parade of sail from 7 a.m. to 1 p.m. on August 11, 2019 once it has commenced, as the tall ships are extremely limited in their ability to maneuver.

(3) The Coast Guard will provide notice of the regulated area prior to the event through Local Notice to Mariners and Broadcast Notice to Mariners. Notice of the requirements of this rule will also be provided as a courtesy by on-scene representatives, as available. Notice of actual enforcement will be provided by on-scene representatives.

(4) The “on-scene representative” of the COTP Duluth is any Coast Guard commissioned, warrant, or petty officer and any Federal, State, or local officer designated by the COTP to act on her behalf.

(5) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP Duluth by telephone at (218) 428-9357, or on-scene representative via VHF radio on Channel 16, to obtain permission to do so. Vessel operators given permission to enter, operate, transit through, anchor in, or remain within the regulated areas must comply with all instructions given by COTP Duluth or on-scene representatives.

(c) *Effective date.* These regulations are effective from 7 a.m. on August 11, 2019, through 5 p.m. on August 13, 2019. These regulations will be enforced from 7 a.m. on August 11, 2019 through 5 p.m. on August 13, 2019, during the Parade of Sail, and during various periods of time by the on-scene representative throughout the event.

Dated: August 2, 2019

F. M. SMITH,  
Commander, U.S. Coast Guard,  
Captain of the Port Duluth.

[FR Doc. 2019-16959 Filed: 8/7/2019 8:45 am; Publication Date: 8/8/2019]